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ALEXANDER L. STEVAS,
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No. 81-117

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

GREGORY L. PORTER,

Petitioner,

v.

GUAM PUBLICATIONS, INC.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

MATTHEW C. GRUSKIN
Counsel for Respondent
P.O. Box BF
Agana, Guam 96910
Telephone: 477-9866

Of Counsel:

FERENZ, WILLIAMS, GRUSKIN & ASHTON, P.C.

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BRIEF IN OPPOSITION

Petitioner presents no grounds warranting a review by certiorari.*

This petition for certiorari does not present a case involving a disagreement in the decisions of different circuit courts, or a question of federal law, or a claimed violation by defendant of plaintiff's constitutional rights. It involves the meaning and effect of a particular Guam statute affording a privilege to newspapers in the publication of pending criminal proceedings.

In *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 60 L.Ed. 629 (1916), the Supreme Court in considering its jurisdiction to review circuit court decisions by certiorari stated, at 258:

> As has been many times declared, this is a jurisdiction to be exercised sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision.

As pointed out in *In re Woods*, 143 U.S. 202, 205, 36 L.Ed. 125 (1892), certiorari is appropriate only

> • • • when questions of gravity and importance were involved. This must necessarily be so in any view, and especially when it is considered that the Circuit Courts of Appeals were created for the purpose of relieving this court of the oppressive burden of general litigation, which impeded the examination and disposition of cases of public concern, and delayed suitors in the pursuit of justice.

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* Respondent is a wholly owned subsidiary of Gannett Company.

The case at bar, involving the meaning and application of the provisions of the Guam Civil Code, which have been comprehensively reviewed by the circuit court of appeals, does not present questions fulfilling the requirements above set forth for review by certiorari.

Plaintiff recognizes, as the ninth circuit has held, that a decision of the Guam district court interpreting a local statute can be corrected by the circuit court where there has been clear and manifest error. This is obviously the case where, as here, the district court is applying a Guam statute which has been taken verbatim from another jurisdiction, the courts of which other jurisdiction have made definitive interpretations of the statute contrary to that of the district court.

Guam Civil Code § 47 was taken verbatim from § 47 of the California Civil Code. Under such circumstances the applicable rule, as set forth in 82 C.J.S. Statutes § 372, is that

> Generally a statute adopted from another state or country will be presumed to have been adopted with the construction placed on it by the courts of that state or country . . . .

As further pointed out by that authority, the rule is ". . . applicable to the construction of . . . statutes adopted by a territory or by a military government . . .". *ibid.*

More particularly, as set forth by that authority in note 68:

> The adoption of Guam civil code, copied from California civil code, by naval government of Guam, warranted inference that codified rules were intended to have same significance and scope as was previously given them by supreme court of California. — U.S. v. Johnson, C.A. Cal., 181 F. 2d 577.

The question involved in the case at bar does not involve a local law based on some peculiar local custom as to which the local court's interpretation might be deemed binding. It involves a question of privilege arising under a Guam statute taken verbatim from an identical California statute the meaning of which has been defined by the California courts.

Tabor v. *Ulloa*, 323 F.2d 823 (9th Cir. 1963) involved an action to partition realty located on Guam. The district court of Guam dismissed the action. The circuit court of appeals, applying and interpreting numerous specific Guam statutes, reversed. The circuit court observed that the Guam statutes involved were the same as particular California statutes, and then observed, at 824 note 5:

> Decisions of the California court subsequent to the adoption of the Code by Guam are not binding, but are persuasive of the construction to be given provisions in the Code of Guam borrowed from the California Code. (citing cases)

The circuit court of appeals then discussed and followed California cases.

Clearly, if the decision of the district court of Guam, on a matter involving a partition of Guam realty and the application of Guam statutes to the partition action, is not such a matter of peculiar local law as to preclude review by the circuit court of appeals, then such a review is not precluded as to a matter of the common law of libel involving the applicability of a Guam statute.

Originally, in this case, defendant Guam Publications, Inc. was granted summary judgment. On appeal, the Supreme Court reversed and remanded to the circuit court of appeals "for further consideration in the light of *Gertz* v. *Robert Welch, Inc.*" This was in fact done and Guam has defined for itself a negligence standard for private individual plaintiffs in defamation actions. The

setting of that standard is not involved in this appeal and in no way touches upon the issue of a statutory privilege for fair and accurate reports of judicial or other public official proceedings. The ground upon which the ninth circuit decided the case is precisely the ground upon which Mr. Justice White would have dismissed the case in 1974, was the basis of an affirmative defense asserted by defendant in its answer filed shortly thereafter, was listed in the pre-trial order as an issue of law to be decided at trial and was the subject of defendant's proposed jury instruction No. 5. To say that the issue of a statutory privilege was raised for the first time on the latest appeal, or that the Supreme Court's mandate was in any respect not followed, is incorrect.

CONCLUSION

The case was correctly decided by the circuit court and the petition for certiorari should be denied.

Respectfully submitted,

MATTHEW C. GRUSKIN
Counsel for Respondent